APPEAL NO. 020294
FILED MARCH 19, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 15, 2002. The hearing officer determined that the respondent (claimant) sustained a compensable repetitive trauma injury, with a date of injury of _____; that she gave timely notice of her injury to her employer; and that she had not made an election of remedies that precluded her from seeking workers' compensation benefits.

The appellant (carrier) has appealed all points decided against it. The first two are evidentiary points; the appeal as to election of remedies argues that the claimant knew and understood that regular health insurance was an alternative to seeking workers' compensation. The claimant asks that the decision be affirmed.

DECISION

Affirmed.

On the matter of election of remedies, we first observe that the Dallas Court of Appeals has held that the 1989 Act, specifically the subclaimant provisions of Section 409.009, removed election of remedies as a viable argument. Valley Forge Insurance Company v. Austin (File No. 001915-F, issued December 20, 2001). Regardless of the ultimate appellate outcome of that case, the Appeals Panel has long held that resorting to one's private health insurance to pay for medical treatment (especially when, as here, the carrier has disputed the compensability of the injury), will not constitute an election under Bocanegra v. Aetna Life Insurance Company, 605 S.W.2d 848 (Tex. 1980). Texas Workers' Compensation Commission Appeal No. 990022, decided February 19, 1999; Texas Workers' Compensation Commission Appeal No. 990262, decided March 26, 1999 (Unpublished); and Texas Workers' Compensation Commission Appeal No. 002682, decided December 22, 2000.

Concerning whether the claimant sustained a repetitive trauma injury from intensive handwriting, and gave timely notice of that injury to supervisors, the hearing officer acted as the sole judge of the weight and credibility of the evidence. Section 410.165. The fact that, as in this case, different inferences could be drawn from conflicting evidence will not compel the Appeals Panel to set aside the decision. *See* Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). There is support for the hearing officer's decision and order, and they are affirmed.

The true corporate name of the insurance carrier is **TIG PREMIER INSURANCE COMPANY** and the name and address of its registered agent for service of process is

BOB KNOWLES
5205 NORTH O'CONNOR BLVD.
IRVING, TEXAS 75039.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge